

**FILED**

**JUL 24 2018**

Clerk, U S District Court  
District Of Montana  
Billings

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA ABRAM DISKIN,

Defendant.

CR 17-60-BLG-SPW

ORDER

Before the Court are Defendant Joshua Diskin's motion in limine (Doc. 35) and motion to produce discovery (Doc. 39).

**1. Motion in limine**

The government concedes the motion in limine and it is therefore granted.


**2. Motion to produce discovery**

Diskin seeks the production of any prior statements made during his interrogation, to inspect text messages between a confidential informant and law enforcement, the production of a forensic analysis of Diskin's cell phone, and to

inspect items seized from the vehicle in question. The government states most of the discovery requested either does not exist or is not in the possession of the government. The government further states the items seized from the vehicle that are currently in the possession of the crime lab will be available for inspection by the defendant prior to trial.

The Court has no authority to order the government to produce items that are not within the government's custody or control. *United States v. Fort*, 472 F.3d 1106, 1110 (9th Cir. 2007) (citing Rule of Criminal Procedure 16(a)). The motion to produce discovery is therefore granted with respect to the items seized from the vehicle and otherwise denied.

DATED this 24<sup>th</sup> day of July, 2018.

  
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SUSAN P. WATTERS  
United States District Judge